INVESTIGATION summary

Forest Practices Board

Road deactivation near the Oyster River

Complaint Investigation 980034
Summary Report
FPB/IRC/06S
April 1998

This summary constitutes the final report for a complaint investigation concluded by the Forest Practices Board in April, 1997. Investigation of public complaints about forest practices is a primary responsibility of the Board under the *Forest Practices Code of British Columbia Act* (the Act). The names of the complainant and the subjects of the complaint are not disclosed in this summary to protect the privacy of the individuals involved.

The Complaint

In mid-November, 1995, a member of the public observed a backhoe operator employed by a forest company carrying out pre-winter road maintenance on a hauling road southwest of Campbell River, Vancouver Island. Waterbars and cross-ditches were being constructed at a time when previous heavy precipitation had saturated the soils. The complainant was concerned that, as a result of this work, silt was entering the Oyster River, causing damage to salmon eggs in the river gravel at that time of year. The complainant contacted a number of government agencies to express concern and subsequently filed a complaint with the Board on December 7, 1995.

The complaint was about road maintenance and de-activation. The complainant's primary concern was that environmental damage was caused by what the complainant considered to be unnecessary road de-activation.

The complainant was also concerned about inadequate consultation during the planning of road maintenance and deactivation activities.

The Board's Decision to Investigate

The Board decided that the complaint was within its jurisdiction to investigate. The road work had been carried out and the complainant had discussed his concerns with

the Ministry of Forests and the licensee. The Board decided to investigate in February 1996.

The Investigation

The investigation began promptly but, after three months, was delayed by staffing shortages. The investigation resumed in February 1997 and was concluded in April 1997. The investigation concerned the following issues:

- Were the enforcement actions by Ministry of Forests (District) and by Ministry of Environment, Lands and Parks in response to a reported violation of the Act appropriate?
- Was the road stabilization work conducted on the Oyster Main haul road between November 14 and 16, 1995 in compliance with approved operational plans and the Act requirements?
- Was public involvement in access management planning adequate?

In the course of the investigation, the Board determined the following:

1. The nature of the work that led to the complaint was "temporary deactivation" of a main logging road.
   The issue was the appropriateness of fall and winter temporary road deactivation activities near salmon streams, not the environmental damage that may have resulted from the specific backhoe operations that led to this complaint.

2. There is no general obligation in the Act for licensees to temporarily deactivate roads. Instead, the District Manager has the discretion to require a deactivation prescription and require the deactivation of forest roads.

3. The temporary road deactivation work that gave rise to the complaint was not required by the District Manager, but was done on the licensee's initiative to minimize road surface erosion during the upcoming winter.

4. Because the licensee was operating under a pre-Code forest development plan, the licensee's temporary road de-activation was not in contravention of the Act.

5. Because the pre-Code forest development plan did not show temporary road deactivation work, District staff were not aware of the licensee's road deactivation activities until after the work had been done.

6. The licensee and technical staff from the Department of Fisheries and Oceans (DFO) carried out a site inspection promptly after being informed of the complainant's concern. Their inspection indicated there was no erosion from the road into the rivers

7. District staff tried to contact the complainant on five occasions but were unable to do so. They undertook a field inspection but did not locate the site.

8. There was no corroboration of the complainant's assertion that the environment

was being damaged as a result of the road deactivation work carried out by the licensee. Also, there was no evidence of damage to the environment that would constitute a contravention of the Act.

9. The prompt and sustained responses of District staff and of the licensee were both reasonable and fair.

10. Public concerns with temporary road deactivation can be conveyed through the public review and comment process associated with annual approval of forest development plans and access management plans.

11. The complainant, due to a seasonal work schedule, had not been able to provide direct input into the public review and comment process for the operational plans for the Oyster River area.

12. The complainant had not attempted to utilize a public group or organization to express concerns about temporary road deactivation, but intended to do so in future.

Board's Conclusion

The Board found that there had been no evidence of a contravention of the Act. There may have been some siltation into the Oyster River, but it was temporary. The investigation found that government staff responded to the complainants concerns in a timely manner. The agencies and the licensee carried out site inspections in response to the complaint but found no evidence of damage some two weeks after the asserted problem.

The Board also considered that the temporary road de-activation was carried out on the licensee's initiative with the intention of minimizing environmental damage. Any environmental damage that did occur resulted from the licensee's efforts to minimize just such effects.

The investigation found that the road deactivation was neither required by, nor known to the District because the work was done under a pre-Code forest development plan. Also, since the Oyster River Main Road had been extensively modified since the work was carried out, there was no practical remedy to rectify any possible damage that occurred in November of 1995. Since the licensee is now operating under an approved access management plan under the Act, there is little likelihood that the sequence of events that led to complaint will be repeated. The District will be made aware of future road deactivation work, and has the authority to require a deactivation prescription from the licensee if environmental damage is possible.

The Board is of the opinion that the complainant should utilize the annual public review and comment process for access management plans to express concerns about the environmental effects of late-fall road de-activation work. Alternatively, the Board suggested that the complainant should be able to express concerns indirectly through a public organization such as the Oyster River Watershed Society, Steelhead Society or BC Wildlife Federation.

In addition, the Board commended the District, licensee and complainant for their respective actions in regard to this complaint. The District and DFO fisheries staff responded promptly, the licensee did non-required work to protect the environment, and the complainant promptly reported what was considered a potential problem, to the appropriate agencies.

Complaint Status

Closed

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